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In re Application of CROWDER et al
U.S. Application No.: 10/595,478
PCT Application No.: PCT/US2004/035433
Int. Filing Date: 26 October 2004
Priority Date Claimed: 27 October 2003
Attorney Docket No.: 9336.14

For: BLISTER PACKAGES AND ASSOCIATED
METHODS OF FABRICATING DRY
POWDER DRUG CONTAINMENT
SYSTEMS

DECISION

This is in response to applicant's "Petition Under 37 C.F.R. §§ 1.47(a) Where One Inventor Cannot Be Reached" filed 26 June 2007.

BACKGROUND

On 26 October 2004, applicant filed international application PCT/US2004/035433, which claimed priority of an earlier United States application filed 27 October 2003. The thirty-month period for paying the basic national fee in the United States expired on 27 April 2006.

On 21 April 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 26 December 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 26 June 2007, applicant filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

With regard to item (1) above, the declaration submitted with the petition is improper. Specifically, the declaration consists of one each of pages 1, 2, 4, and 5 and two of page 3. It is not acceptable to combine pages from different documents into a composite declaration. Applicant must submit either: (1) a single complete declaration which is presented to and executed by all of the available inventors or (2) multiple complete declarations, wherein the signature of each available inventor appears on at least one of the multiple complete declarations.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, an affidavit or declaration of facts should be submitted which fully describes the exact facts which are relied on to establish that a diligent effort was made. . . . The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter of instructions, telegrams, etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The petition states that joint inventor Mark Ketner cannot be located. The petition sufficiently demonstrates that a diligent effort was made to find Ketner. Specifically, petitioner attempted to reach Ketner by postal mail, by searching public directories, and by contacting Ketner's former colleagues. Thus, it can be concluded with reasonable certainty that Ketner cannot be found after diligent effort.

With regard to item (3) above, applicant has provided the requisite petition fee.

With regard to item (4) above, the petition states the last known address of the nonsigning inventor.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are

available under 37 CFR 1.136(a). Failure to timely file a proper response will result in abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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